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FILED
SEP 13 2022 *KR*
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

6 Debtor

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 In re:) **Case Number: 18-52801-MEH**
12 MICHAEL HAROUTUN MIROYAN) Chapter 13
13 Debtor.) MEMORANDUM OF POINTS
14) AND AUTHORITIES IN
15) SUPPORT OF MOTION FOR
16) DAMAGES FOR VIOLATIONS
17) OF THE AUTOMATIC STAY
18) Date: Thursday October 27th 2022
19) Time: 1:30 p.m.
20) Location: Courtroom 9
21) Judge: Hon. Elaine Hammond

22 The United States Bankruptcy Court in Nevada discussed the history
23 and rationale behind the automatic stay law as follows:

24 "A. Applicable Legal Standards.

25 1. Automatic Stay Violations.

26 The automatic stay under Section 362(a) generally arises as
27 soon as a bankruptcy petition is filed. Congress has stated:

28 The automatic stay is one of the fundamental
debtor protections provided by the bankruptcy laws.
It gives the debtor a breathing spell from his [or her]
creditors. It stops all collection efforts, all
harassment, and all foreclosure actions. It permits
the debtor to attempt a repayment or reorganization
plan, or simply to be relieved of the financial
pressures that drove him into bankruptcy.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 340 (1978), reprinted
in 1978 U.S.Code. Cong. & Admin. News 5787, 5963, 6296-97,
quoted in Schwartz v. United States (9th Cir. 1992), 954 F.2d
569, 571 (emphasis added). See also 3 COLLIER ON
BANKRUPTCY, ¶362.03 (Richard Levin and Henry J. Sommer,
eds., 16th ed. 2019) ("The stay provides the debtor with relief

1 from the pressure and harassment of creditors seeking to
2 collect their claims. It protects property that may be necessary
3 for the debtor's fresh start and, in terms of a debtor in a chapter
11, 12 or 13 case, provides breathing space to 340*340 permit
the debtor to focus on rehabilitation or reorganization.").

4 The automatic stay precludes all entities from committing "any
5 act to ... enforce any lien against property of the estate." 11
6 U.S.C. § 362(a)(4). It also applies to "any act to ... enforce
7 against property of the debtor any lien to the extent such a lien
8 secures a claim that arose before the commencement" of the
9 bankruptcy case. 11 U.S.C. § 362(a)(5). Additionally, the
10 automatic stay bars "any act to collect, assess, or recover a
11 claim against the debtor that arose before the commencement"
12 of the bankruptcy case. 11 U.S.C. § 362(a)(3). **Because the
13 stay arises "automatically" upon the filing of a bankruptcy
14 petition, it applies regardless of whether a party has actual
15 knowledge or even notice that the bankruptcy petition was
16 filed.** See generally 3 COLLIER ON BANKRUPTCY, supra,
17 ¶362.02.

18 Section 362(k) provides that an individual debtor injured by a
19 willful violation of the automatic stay shall recover actual
20 damages, including costs and attorneys' fees, and, may
21 recover, in appropriate circumstances, punitive damages. 11
22 U.S.C. § 362(k)(1). A violation is willful if a movant shows by a
23 preponderance of the evidence that a party knew of the
24 automatic stay, and its actions in violation of the stay were
25 intentional. See *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d
26 1210, 1215 (9th Cir. 2002); *In re Paxton*, 596 B.R. 686, 694
27 (Bankr. N.D. Cal. 2019), amended in part on reconsideration,
28 2019 WL 2462797 (Bankr. N.D. Cal. June 12, 2019).
"Knowledge of the bankruptcy filing is the legal equivalent of
knowledge of the automatic stay." *Ozenne v. Bendon* (*In re*
Ozenne), 337 B.R. 214, 220 (9th Cir. BAP 2006). "No specific
intent is necessary, and a creditor's good faith belief that it was
not violating the stay is irrelevant to the issue of willfulness."
Paxton, 596 B.R. at 694, citing *Morris v. Peralta* (*In re Peralta*),
317 B.R. 381, 389 (9th Cir. BAP 2004).[33] Upon a
determination that a willful violation has caused injury to an
individual, Section 362(k)(1) expressly provides that the
individual "shall recover" the types of damages and attorney's
fees specified in the statute.

23 "Once the creditor learns that a bankruptcy petition has been
24 filed, the creditor has an affirmative duty to return the property
25 to the debtor and to restore the status quo. See *In re Smith*,
26 876 F.2d 524, 526 (6th Cir. 1989) (creditor had not known of
27 debtor's filing at the time of repossession but was, nonetheless,
28 required to return vehicle); *Dawson v. J & B Detail, LLC* (*In re*
Dawson), Adv. No. 05-1463, 2006 WL 2372821 at *8 (Bankr.
N.D. Ohio July 28, 2006) ("While the Court does not expect
instantaneous compliance with section 362 upon receipt of
notice [of the bankruptcy], **the Court does expect those acts
which violate the automatic stay to be stopped and/or
corrected within a reasonable time**"). Accordingly, having

1 been notified of the debtor's bankruptcy around 10:00 A.M. on
2 July 22, 2015, it was incumbent upon the creditors to return the
3 vehicle within a short period of time. Yet they retained the
4 vehicle for 17 days after receiving notice of the bankruptcy and
5 the debtor's request to have the vehicle returned. There is no
6 dispute that the creditors could have taken affirmative steps to
7 return the debtor's vehicle promptly. Accordingly, the Court
8 concludes that the creditors' failure to return the vehicle to the
9 debtor shortly after receiving notice of the bankruptcy and the
10 debtor's request to have the vehicle returned was a willful
11 violation of the automatic stay."

12 **ACTS OF COURTS DONE IN VIOLATION OF THE AUTOMATIC STAY** 13 **ARE VOID**

14 The Court in In re: Smith stated:

15 "Under section 362(a) of the Bankruptcy Code, the filing of a
16 petition creates a broad automatic stay protecting the property
17 of the debtor. This provision "has been described as 'one of the
18 fundamental debtor protections provided by the bankruptcy
19 laws.'" Midlantic Nat'l Bank v. New Jersey Dep't of Env'tl.
20 Protection (1986) 474 U.S. 494, 503. (quoting S.Rep. No. 989,
21 95th Cong., 2d Sess. 54 (1978); H.R.Rep. No. 595, 95th Cong.,
22 1st Sess. 340 (1977)). The automatic stay extends to virtually
23 all formal and informal actions against property of the
24 bankruptcy estate. It is intended to "stop[] all collection efforts,
25 all harassment, and all foreclosure actions." S.Rep. No. 989,
26 95th Cong., 2d Sess. 54, reprinted in 1978 U.S.Code Cong. &
27 Admin.News 5787, 5840. The automatic stay "is effective upon
28 the date of the filing of the petition ... and formal service of
process will not be required." 2 Collier on Bankruptcy ¶ 362.03
(15th ed. 1988) (footnotes omitted). **Actions taken in violation
of the automatic stay generally are void, even if the
creditor had no notice of the stay.** See, e.g., In re Clark, 60
B.R. 13, 14 (Bankr.N.D.Ohio 1986) (Creditor "had not known of
Debtor's filing at the time of repossession but ... it was,
nonetheless, required to return the vehicle to Debtor."); In re
Advent Corp., 24 B.R. 612 (Bankr. 1st Cir.1982) (**acts in
violation of automatic stay are void regardless of lack of
knowledge**); Collier, supra, ¶ 362.03 ("In general, actions
taken in violation of the stay will be void even where there
was no actual notice of the existence of the stay.").

In re: Smith (6th Cir. 1989) 876 F.2d. 524 at 525-526.

29 **GRANTING OF SUMMARY JUDGMENT MADE 2 WEEKS AFTER** 30 **BANKRUPTCY PETITION WAS FILED WAS HELD TO BE VOID**

31 In Ellis v. Consolidated Diesel Electric Corporation (10th Cir. 1990)
32 894 F.2d 371, the Tenth Circuit Court of Appeals held that summary
33 judgment that was granted 2 weeks after the Defendant filed for
34 bankruptcy was void.

1 Bankruptcy was void:

2 "Plaintiffs contend that, because of the automatic stay then in
3 effect, the district court lacked jurisdiction to enter the order
4 granting summary judgment. Consequently, plaintiffs reason,
5 there was not and still is not a final judgment in favor of LTV
6 and Vought from which they could appeal.

7 II.

8 According to the automatic stay provisions of section 362, all
9 proceedings^[3] against a debtor are stayed upon the debtor's
10 filing of a petition for bankruptcy. 11 U.S.C. § 362(a)(1). It is
11 well established that any action taken in violation of the stay is
12 void and without effect. *Kalb v. Feuerstein*, 308 U.S. 433, 438,
13 60 S.Ct. 343, 346, 84 L.Ed. 370 (1940) ("the action of the ...
14 court was not merely erroneous but was beyond its power,
15 void, and subject to collateral attack"); *Meyer v. Rowen*, 181
16 F.2d 715, 716 (10th Cir.1950); *In re Sambo's Restaurants, Inc.*,
17 754 F.2d 811, 816 (9th Cir.1985); *Borg-Warner Acceptance*
18 *Corp. v. Hall*, 685 F.2d 1306, 1308 (11th 3/3*3/3 Cir.1982); 2
19 *Collier on Bankruptcy* § 362.11 (15th ed. 1989).

20 While the automatic stay on judicial proceedings generally
21 operates to ensure that a "debtor [is given] a breathing spell
22 from his creditors," the fact that judgment here was entered *in*
23 *favor* of the debtor does not change the outcome. As one court
24 noted, "whether a case is subject to the automatic stay must be
25 determined at its inception." *Association of St. Croix Condo.*
26 *Owners v. St. Croix Hotel*, 682 F.2d 446, 449 (3rd Cir.1982).
27 The operation of the stay should not depend upon whether the
28 district court finds *for* or *against* the debtor.

Our ruling today is consistent with that of *Pope v. Manville*
Forest Products Corp., 778 F.2d 238 (5th Cir.1985). In that
case, a district court had dismissed a Title VII claim against the
defendant *after* the defendant had filed Chapter 11 proceedings
in the bankruptcy court. The Fifth Circuit reversed the lower
court, and emphasized that "absent the bankruptcy court's lift of
the stay, ... a case such as the one before us must, as a
general rule, simply languish on the court's docket until final
disposition of the bankruptcy proceeding." *Id.* at 239.

One final problem is the lifting of the stay subsequent to the
entry of judgment on behalf of defendants. However, the stay
on judicial proceedings made the district court's action void;
lifting the stay does not change the character of that action.
The lifting of the stay thus validates only later judicial
proceedings, not prior ones."

Ellis v. Consolidated Diesel Electric Corporation (10th Cir. 1990) 894
F.2d 371 @ 372-373.

PUNITIVE DAMAGES

A party injured by a willful violation of the stay may recover punitive damages in appropriate circumstances; the debtor must show that the:

"creditor's conduct was `egregious, vindictive, or intentionally malicious."

In re Bilfield, 494 B.R. 292, 304 (Bankr. N.D. Ohio 2013), quoting In re Bivens, 324 B.R. 39, 42 (Bankr. N.D. Ohio 2004). See also Weary v. Poteat, No. 15-5159, 2015 WL 5712191, at *2 (6th Cir. Sept. 30, 2015) ("While proof of an overt wrongful intent is not required, it must be shown that the creditor acted in bad faith or otherwise undertook its actions in reckless disregard of the law." Bivens, 324 B.R. at 42. An award of punitive damages is within the bankruptcy court's discretion where actual damages are an insufficient deterrent to further violations. See Archer, 853 F.2d at 500.

In re Hunsaker, Adv. No. 14-6218, Case No. 12-64782-fra13 (January 13, 2016)

In a recent Ohio case, Bankruptcy Judge Kay Woods imposed a \$250,000 punitive damage award against a mortgage lender, Nationstar Mortgage ("Nationstar") for, among other failings, filing an erroneous transfer of claim in a debtors' bankruptcy proceeding. See In re Mocella, 2016 Bankr. LEXIS 2472 (Bankr. N.D. Ohio June 15, 2016).

1 Date: September 13th 2022.

Respectfully submitted,

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4 Michael Miroyan

BANKRUPTCY COURT

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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Name:

Michael Micoyan

Case #:

18-52601-MEH